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No. _____

In The
# Supreme Court of the United States

WALTER K. LAWSON,

*Petitioner,*

v.

THE FEDERAL TRADE COMMISSION,

*Respondent.*

On Petition For A Writ Of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

## PETTITION FOR A WRIT OF CERTIORARI

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78pp

## QUESTIONS PRESENTED

1. Do "the people" have an unconditional right to a trial by jury in a civil action initiated by the government pursuant to the Seventh Amendment to the Constitution of the United States?

2. Or as in "1." above, a jury trial pursuant to Article I, Section 9, paragraph 3 of the Constitution of the United States?

3. Do "the people" who are third-parties, who are directly implicated by the government in the alleged wrongdoing of a civil action initiated by the government, who are treated as defendants, and who are denied certain constitutional rights in the very transactions of the civil action, have an unconditional right to a trial by jury in that civil action by intervening of right or being otherwise joined in that civil action in order to preserve, protect and defend any of their rights and immuneities granted under the Constitution that were denied them during the conduct of the civil action, under Rule 24(a)(2) of the Federal Rule of Civil Procedures?

4. Or as in "3." Above, a right to intervene or be joined under the Civil Rights Act, Title 42 USC Sections 1983, 1985(2), 1985(3) 1986, and/or 1988(a)?

5. Is the Code of Federal Regulations, 16 CFR 310.3(a)(2)(vi), unconstitutional?

## PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, Denyse L. Anderson and Michael Anderson were parties before the Court of Appeals.

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The ORDER of the District Court is reported at Federal Trade Commission v. Affordable Media, LLC, *et al.*, Civil Case No. CV-S-98-0669-LDG (RLH), District of Nevada, entered on March 20, 2000 (Appendix B).

FINAL ORDER FOR JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANTS FINANCIAL GROWTH CONSULTANTS, LLC, MICHAEL ANDERSON, AND DENYSE ANDERSON is reported at Federal Trade Commission v. Affordable Media, LLC, *et al.*, Civil Case No. CV-S-98-0669-LDG (RLH), District of Nevada, entered on March 20, 2000 (Appendix C).

## STATEMENT OF JURISDICTION

The MEMORANDUM of the United States Court of Appeals for the Ninth Circuit ("Appeals Court") was entered on May 30, 2001.

The jurisdiction of this Court is invoked under Title 28 USC, Section 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U. S. Constitution, Article I, Section 7.**

"All Bills ... shall, before it become a Law ...". (Appendix D).

**U. S. Constitution, Article I, Section 9, paragraph 3**

"No Bill of Attainder or ex post facto Law shall be passed."

**Amendment VII to the U. S. Constitution**

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

**Federal Rules of Civil Procedure, Rule 24(a)(2)**

"(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties".

**Title 42 United State Code, Section 1988(a)**

"Applicability of statutory and common law." (Appendix E).

**Title 42 United State Code, Section 1983**

"Civil action for deprivation of rights." (Appendix F).

**Title 42 United State Code, Section 1986**

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"Conspiracy to interfere with civil rights." (Appendix H).

**Code of Federal Regulations, 16 CFR 310.3(a)(2)(vi)**

"Deceptive telemarketing acts or practices." (Appendix I).

## STATEMENT OF THE CASE

In late December 1997, based upon drastic changes occurring at that time at Affordable Media, LLC ("Affordable"), Financial Growth Consultants, LLC ("Financial") having a fee for service contract with Affordable, began an inquiry of Affordable. Denyse and Michael Anderson ("Andersons") were members on the board of Financial. On January 22, 1998, Financial, not satisfied with the then current conduct of Affordable's business, terminated its relationship with Affordable, closed its office and began a civil action against Affordable. At that time all of

Financial's business records were moved to Denyse L. Anderson's home office at 4502 Saratoga Ave., San Diego, California[1].

In mid-February1998, Laura Varner-Gavard opened her businesses LVG Consultants, LLC ("LVG") and Inter Com Business Consultants, LLC ("Inter Com"). Inter Com rented the office space vacated by Financial. Andersons were consultants to LVG. Petitioner Walter K. Lawson ("Lawson") was an employee of Inter Com.

On April 23, 1998, Respondent Federal Trade Commission ("Government") finding Affordable not responsive to their administrative process and of hearing of the disappearance of Eric Stein, Managing Director of Affordable, the Government filed an *ex parte* civil action in the U.S. District Court, District of Nevada against Affordable and others including Financial alleging each committed fraud. Andersons, as individuals, were named defendants being allegedly monetarily liable for Financial's actions.

The Government in its complaint alleged that Financial does business as Inter Com.

The District Court granted Government's *ex parte* motion for a Temporary Restraining Order ("TRO") that included provisions of a search and seizure warrant ("warrant") against Financial and a seizure of all of Andersons' assets.

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[1] **Official Court Transcript, Deposition of Denyse L. Anderson, April 28, 1998, p 14, line1 and p 76, lines 3-7.**

On April 24, 1998 the Government including its agent the City of San Diego, California exercised the warrant in a raid upon the offices of Inter Com and LVG. None of the actions taken against third-parties (Gavard, LVG, Inter Com, Lawson and other employees) was authorized by the warrant, such as the search and seizure of their persons and property.

The Government having virtually unlimited resources, and using excessive force, devastated third-parties to the extent that they were fearful for their lives: Their "money" was taken; their good employment was lost; some became virtually "homeless"; they suffered mental anguish; none having the legal expertise or resources to defend themselves against such tyranny.

On May 6, 1998 third-parties voted for Lawson to spearhead a defense on behalf of themselves. Legal counsel was sought, but no attorney could be found that would take the case estimated to cost about $100,000. Therefore, Lawson while holding down a full time job educated himself in the law necessary to defend himself and other third-parties in this civil action. It took several months.

Several letters were sent to those in authority in this case including the presiding judge; all in vain.

On April 12, 1999 Lawson on behalf of himself and other third-parties filed a counter complaint in this case against the Government, its

employees and agents seeking injunctive relief from the denial of constitutional rights and return of illegally seized property (about $16,000, much of which remains seized as of this date that belongs to third-parties), damages and other relief, and moved to intervene of right and for trial by jury.

During litigation in both the District Court and the Appeals Court, the Government has never denied any of the allegations made in the Petitioner's Complaint or Motion to Intervene.

March 20, 2000 the District Court granted Commission's motion for a Summary Judgment against Anderson, found as fact that third-parties including Lawson committed fraud, and denied Petitioner's complaint and motions as being moot.

## REASONS FOR GRANTING THIS PETITION

**I. This Petition should be granted because it was the intent and will of "the people" to include the security of trial by jury in the new government they formed. Trial by jury was the majority, customary manner in deciding both criminal and civil causes at the times the Constitution and its Bill of Rights were formulated. While this case is a civil cause of action Petitioner has a right to trial by jury under the Seventh Amendment to the Constitution, and Petitioner relies on the plain text meaning of Seventh Amendment that expressed "the peoples'" determination.**

First, the District Court found as fact that "*The Enjoined Defendants* [Financial and Andersons] *and persons under their control* [third-parties including Lawson] *have misrepresented material facts in violation of Section 5(a) of the FTC Act*", and have made false and material misrepresentations to consumers[2]; Commission's Complaint alleges that "*Financial Growth Consultants* [Financial] *does business under the names of* ***Sterling Marketing Group*** *and* ***Inter Com Business Consultants, LLC*** [Inter Com]"[3]; Lawson was an employee of Inter Com[4]. The District Court found as fact that "... *Lawson claims that FGC* [Financial] *and the Andersons owe him a salary*"[5]. The warrant provisions of the

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[2] FINAL ORDER FOR JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANTS FINANCIAL GROWTH CONSULTANTS , LLC, MICHAEL ANDERSON, AND DENYSE ANDERSON, p 3 of 20, lines 18 - 23, filed March 20, 2000, docket #307. (App. C, p A 19, par 8-9)

[3] COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF, p 3, lines 1-2. Emphasis is in the original, and such emphasis is used under the section titled "THE PARTIES" for each defendant described pp 2-4, par 4-15, filed 4/23/1998, docket #1.

[4] DECLARATION OF WALTER K. LAWSON AND OTHERS AND EXHIBITS IN SUPPORT OF LAWSON'S MOTION TO INTERVENE OF RIGHT, MOTION FOR TRAIL BY JURY OF RIGHT, MOTION TO CHANGE VENUE; AND COMPLAINT AGAINST PLAINTIFF, PLAINTIFF'S AGENT AND EMPLOYEES DOES 1 THROUGH 35, p 2 of 19, par 6, filed 8/4/1999, docket #243.

[5] ORDER, p 6, lines 24-25, entered March 20, 2000, docket #308. (App. B, p A 13, lines 9-10)

TRO were exercised against Lawson, Gavard, Inter Com, LVG and other third-parties. During the exercise of the warrant several constitutional rights were denied them, and actions not authorized by the warrant were take against them[5]. Despite that Inter Com and others are not in the caption of the case, Petitioner and other third-parties are in reality defendants. They were treated as such by word and acts in the very transactions of this case"[6].

Second, "the peoples'" intent was firmly established in our Declaration of Independence. One reason for dissolving the English rule was "For depriving us in many cases, of the benefits of Trial by Jury".

Third, "the people" went to war and forced Britain out of their land and out of their way of living, so that they would be self-governed and able to determine their own course of living. In 1783 that will was realized when the British army sailed away from the harbor of New York City and General Washington entered and took possession of the city.

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[6] DECLARATION OF WALTER K. LAWSON AND OTHERS AND EXHIBITS IN SUPPORT OF LAWSON'S MOTION TO INTERVENE OF RIGHT, MOTION FOR TRAIL BY JURY OF RIGHT, MOTION TO CHANGE VENUE; AND COMPLAINT AGAINST PLAINTIFF, PLAINTIFF'S AGENT AND EMPLOYEES DOES 1 THROUGH 35: Lawson's Declaration, pp 1-19, and the Declarations of six other third-parties, Lawson EXHIBITS 3-8, filed 8/4/1999, docket #243.

Fourth, the issue of Trial by jury in both criminal and civil causes was thoroughly debated in the Constitution Convention in Philadelphia and in the States Legislatures' conventions. The results of which produced the Bill of Rights that included the Sixth and Seventh Amendments granting our right trial by jury in criminal and civil causes.

Fifth, the issue facing "the people" was not whether to secure or not secure trial by jury in criminal and civil causes *per se'* . The issue was whether that security was to become explicitly written as a right in the Constitution and/or a bill of rights. Even those not wanting to explicitly include that right, arguing that that which is not written is not given up, felt it would provide an additional security to "the people". For example, Elbridge Gerry "urged the necessity of Juries [in civil cases] to guard agst. corrupt judges"[7]; others felt it may prevent general abuses of government.

Sixth, as shown in the *FEDERALIST No. 83*[8], attributed to Alexander Hamilton, there can be

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[7] Gerry of the State of Massachusetts was a signer of the Declaration of Independence, was a delegate of the Constitution Convention in Phila., and member of the House of Representative of the First Congress of the United States. The Library of Congress, American Memory, Historical Collections for the National Digital Library, Farrand's Records – Madison Wednesday September 12, 1787 – In convention, p 587.

[8] The Library of Congress, American Memory, Historical Collections for the National Digital Library can be found on the Internet at: ttp://lcweb2.loc.gov/const/fed/fed_83.html

no doubt that the majority of civil causes were tried by jury. Hamilton describes the civil causes as being those tried in courts known as Common Law, Probate, Chancery, and Admiralty, as those courts were known to New York; he compares New York practices to the other states.

In civil causes tried in New York, there were no juries for those civil causes tried in the courts of Probate, Chancery (Equity)[9], or Admiralty.

However, eight of the thirteen states[10] had jury trials in civil causes of action of Probate[11], Equity and Admiralty.

The Courts of Chancery in Britain had jurisdiction of equity causes of action, and those were not tried by juries.

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[9] Hamilton describes Chancery as Equity: " ...jurisdiction of the courts of law to matters of equity will not only be unproductive of the advantages which may be derived from courts of chancery ...", *ib* footnote 8.

[10] *ib* Connecticut, Delaware, Georgia, Massachusetts, New Hampshire, North Carolina, Pennsylvania, and Rhode Island.

[11] "This was how matters stood until 1745. In that year another intestate case was appealed to England by one Samuel Clark. In this case, Connecticut successfully argued that British common law did not automatically apply to the colonies and pointed out that Massachusetts intestacy law had been upheld by the Privy Council even though it violated common law. Connecticut won and the intestacy issue was finally resolved in the colony's favor[10]." Yale-New Haven Teachers Institute, Connecticut: A Case Study in Anti-Imperialism 1636-1776, Elizabeth T. Tiano.[10] Taylor, p 199.

It is clear, as succinctly put by George Mason[12], that "*The common law of England is not the common law of these states*".

Seventh, the plain meaning expressing the powers and the rights conveyed in the text of the Constitution and its Bill of Rights was an important issue in the debates.

Caleb Strong: "Gentlemen have said, the proposed Constitution was in some places ambiguous. I wish they would point out the particular instances of ambiguity; for my part I think the whole of it is expressed in the plain, common language of mankind"[13].

Patrick Henry: "Their rights ought to be secured in language of which they know the meaning"[14]. "A constitution, sir, ought to be, like

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[12] On Wednesday, June 18, 1788, in the Virginia legislature, George Mason declared "But by that paper we are consolidating the United States into one great government, and trusting to constructive security. You will find no such thing in the English government. The common law of England is not the common law of these states", Mason was one of the Virginia delegates to the Constitutional Convention held in Philadelphia. The Library of Congress, American Memory, Historical Collections for the National Digital Library, Elliot's Debates, Vol. III, p 508; *ib* Vol. I, pp 389-390; respectively.

[13] The Library of Congress, American Memory, Historical Collections for the National Digital Library, Farrand's Records — CLXIX Caleb Strong in the Massachusetts Convention, January 16, 1788.

[14] The Library of Congress, American Memory, Historical Collections for the National Digital Library, The Debates the

a beacon, held up to the public eye, so as to be understood by every, man"[15].

There can be no doubt that the meaning of 'common law' in the Seventh Amendment is as the common people knew it to be in the States of the United States, not England, and not in any legal technical term or jargon: That is, that in all civil causes of action, including those in equity, "the people" have a right to trial by jury.

Eighth, this Court held in Tull v. United States, 481 U.S. 412 (1987) that "The Seventh Amendment guarantees a jury trial to determine liability in actions by the Government seeking civil penalties and injunctive relief under the [Clean Water] Act". In this case, a trial by jury is necessary to determine liability.

**II. This Petition should be granted because Petitioner has a right to a trial by jury under Article I, Section 9, paragraph 3 of the Constitution.**

Petitioner as well as third-parties were denied several rights and immunities granted under the Constitution. Their persons and property were seized. Much of their property remains seized. Their character was besmirched. Their

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Several State Convention on the Adoption of the Federal Constitution, in Virginia's Legislature, Friday, June 20, 1788, Elliot's Debates.

[15] *ib*, Monday, June 23, 1788.

freedom to do as they please was taken from them at least once in this case. They were harassed, intimidated, coerced, and other human rights were denied them. All constituting punishments, much done upon the exercise of the warrant being a bill of attainder in this case because the punishment was meted-out without benefit of a trial by jury. Before persons and property and other rights may be attained, a jury trial is necessary to determine if a wrongful act has been committed since the Constitution forbids attainders. The orders of the District and Appeals Court denying Petitioner's right to intervene and right to jury trial are bills of attainder under the circumstances. Without even a hearing in court to argue one's position, the denial to one's due process, granted under the Fifth Amendment, is a punishment. Petitioner has a right to jury trial or a right to intervene in order to obtain the right to jury trial.

**III. This Petition should be granted because Petitioner has a right to intervene based upon the "totality of the circumstances" doctrine regarding the Federal Rules of Civil Procedure, Rule 24(a)(2).**

The Appeals Court in its Memorandum refers only to one case, *League of United Latin American Citizens v. Wilson*, 980 F. Supp. at 786 - 87, in affirming the District Court's denial of Petitioner's Motion to Intervene of right.

In *League* four parties successfully intervened nine months into that case. ACNFARI

attempted to intervene twenty-seven months into the case and the district court denied intervention. ACNFARI appealed to the Ninth Circuit that wrote, "*more damaging to ACNFARI's motion than the twenty-seven month delay itself, is its failure adequately to explain – either in its original motion to the district court, in its opening or reply brief to this court, or at oral argument - the reason for its delay*".

First, it is noted that this Petitioner has never been given the opportunity to be heard in the District or the Appeals Courts to give oral argument on Petitioner's Motion to Intervene.

Second, it is noted that the Government did not with its virtual unlimited resources devastate ACNFARI by seizing its assets and otherwise rendering it impossible to immediately defend itself.

Third, the Appeals Court's reasons for denying Petitioners intervention is contrary to the record in this case, and contrary to case law.

Timeliness is clearly provided in the Motion to Intervene: "*On April 24, 1998, when the TRO in this matter was executed, my life and the lives of Employees were 'turned up-side-down'. It has taken several months for me and other Employees to get 'back on our feet'. Neither, the Employees or me are attorneys and do not have sufficient funds to hire an attorney to defend our interests in this matter. We had to take several months to learn as much about the law, our rights and to investigate*

*this matter. Under the circumstances, we have acted in a timely fashion to protect our interests*"[16], and also in Reply Brief: "*Lawson is not an attorney (he had to extensively educate himself), Lawson did not have sufficient funds to have others do the extensive research needed in this matter as to the law and his rights, and Lawson had to extensively investigate all aspects of this matter. All of which had to be done while working full time to provide his basic needs of living*"[17], and further in Reply, "*Lawson re-asserts that under the circumstances and as to Lawson's abilities and resources, his Motion to Intervene was timely*"[18].

Furthermore, the United States Court of Appeals for the Third Circuit, No. 93-1099, in *United States of America v. Alcan Aluminum, Inc., et al.* held, "*In determining whether an application for intervention as of right is timely, we are reminded that, '[s]ince in situations in which intervention is of right the would-be intervenor may be seriously harmed if he is not permitted to intervene, courts should be reluctant to dismiss a request for intervention as un-timely, even though they might*

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[16] **MOTION TO INTERVENE OF RIGHT, p 3, par 7, filed April 12, 1999, docket #203**

[17] **REPLY TO FEDERAL TRADE COMMISSION'S OPPOSITION TO WALTER K. LAWSON'S MOTION TO INTERVENE OF RIGHT, p 3, par 4.a. from second sentence, filed 5/10/99, docket #220**

[18] **MOTION TO INTERVENE OF RIGHT, pp 1-2, par 2 including sub-paragraphs a-c.**

*deny the request if the intervention were merely permissive'. Wright & Miller, supra, §1916 at 424*"; the U.S. 9th Circuit Court of Appeals in *U.S. Ex Rel McGough v. Covington Technologies*, 967 F.2d 1391 (9th Cir. 1992) wrote: "*Generally, Rule 24(a)(2) is construed broadly in favor of proposed interventor ...*"; and the United States District Court for the Southern District of Illinois in *Miami Tribe of Oklahoma v. Rex U. Walden, et al.*, Case No. 00-cv-4142-JPG agrees that "*Courts should construe RULE 24(A)(2) liberally and should resolve doubts in favor of allowing intervention*".

The Motion to intervene did not prejudice the parties by causing undue delay. This case began *ex parte'* on April 23, 1998, and the TRO was exercised on April 24th. The preliminary injunction was ordered on May 8, 1998 in court (formalized in writing on May 22nd). Nothing was heard from May 8th to March 22, 1999 regarding the trial of the facts of the complaint because contempt proceedings were being conducted during that time, and because the preliminary injunction was appealed to the Ninth Circuit. According to the record, in error, a final order was issued against Financial and Anderson and upon objection was vacated on March 31, 1999. On April 12, Petitioner's Complaint and Motions to Intervene of right and for jury trial were filed. On June 21, 1999 the Ninth Circuit affirmed the District Court's preliminary injunction. Limited discovery was re-opened on July 16, 1999. On September 23, 1999 the District Court "*advised counsel that the Motion for Summary Judgment has been fully briefed and the parties were re-*

*quested to provide the court with any additional information to be considered*". On March 20, 2000 the District Court granted summary judgment against Financial and Andersons, and denied Petitioner's Motion to Intervene of right as moot therefor. During the period April 1998 through March 2000, other parties to the case were disposed of in one was or another. If the intervention would have created undue delay, it should have been denied immediately rather than almost one year later.

The cognizable interests of Lawson, Gavard, LVG, Inter Com and others are the assets seized in the transactions of the case that belong to them that remain seized as stated in Motion to Intervene "*The total pecuniary interests of myself and others is almost $16,000*"[19]; their character and integrity have been besmirched; and their legally protected rights granted them under the Constitution also constitute their significant interests, and as to granted rights under the Constitution, the Motion to Intervene stated, "*Furthermore, the Employees including myself have interests in the restoration and defense of eight of our U.S. Constitutional rights*"[20].

This Court in *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971), regarding character and integrity alone held that "*[w]here a person's*

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[19] MOTION TO INTERVENE OF RIGHT, p 3 par 5.

[20] *ib*, p 2, sub-par c.

*good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard is essential". And in Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168 (Frankfurter, J. concurring) '[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardship of a criminal conviction, is a principal basic to our society'".*

The Motion to Intervene described the impairment: "*Lawson and others have suffered enormous injury and damages as a result of Plaintiff's wrongful acts and the wrongful acts of its employees and agents taken against Lawson and others in this case*"[21].

U.S. 9th Circuit Court of Appeals in *Forest Conservation v Forest Service*, No. 95-15341, held "*...as here, the injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interest, that party satisfied the "interest" test of Fed. R. Civ. P. 24(a)(2)*".

The Defendant's attorney in this case was Baker and McKenzie. Reply Brief to Motion to Intervene is clear that Petitioner's interests have not been, and probably will not be adequately represented: "*... McKenzie does not and will not represent Lawson and others in this matter be-*

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[21] MOTION TO INTERVENE OF RIGHT, p 4, par 5.d.

*cause McKenzie believes it would be a conflict of interest*"[22]. Because McKenzie was unpaid, it moved on several occasions to withdraw; "*There is no incentive for McKenzie to properly continue to represent their clients or me or others*"[23]. "*... McKenzie did not assert their client's Constitutional Right to trial by jury ...*" after being denied in November 1998[24]. "*Lawson's interests and the interests of other have in fact not been adequately represented and all indications are that those interests will not be adequately represented without intervention*"[25].

U.S. 9th Circuit Court of Appeals in *Forest Conservation v Forest Service*, No. 95-15341, held "*The applicant-intervenor's burden in showing inadequate representation is minimal; it is sufficient to show that representation may be inadequate. Trbovich v. United Mine Workers, 404 U.S. 528, 538 n. 10 (1972); California v. Tahoe Regional Planning Agency, 792 F.2d 775, 779 (9th Cir. 1986)*".

Based upon the totality of the circumstances doctrine, Petitioner's motion to intervene was timely, asserted significant cognizable interests,

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[22] REPLY TO FEDERAL TRADE COMMISSION'S OPPOSITION TO WALTER K. LAWSON'S MOTION TO INTERVENE OF RIGHT, p 4 of 6, sub-paragraph c.

[23] *ib*, sub-paragraph d., last sentence.

[24] *ib*, sub-paragraph e.

[25] *ib*, sub-paragraph f.

showed impairment if the motion were to be deied, and showed that putative interests weren't adeuately and probably would not be represented without intervention.

**IV. This Petition should be granted because the City of San Diego, California was employed by the Government as its agent to also exercise the warrant provisions of the TRO in this case. The City acting as an agent for the Government did deny Petitioner and third-parties several of their constitutional rights; the City is subject to the Civil Rights Act.**

The Civil Rights Act enacted by Congress provides greater protection for "the peoples'" constitutional rights by giving them more civil remedies including implied joinder and intervention "or other proper proceeding for redress".

Under the color of law in the very transactions of this case, the following rights and immunities were denied Petitioner and third-parties: Their persons and property were attained without benefit of a trial by jury against the immunity provided in Article I, Section 9, paragraph 3 of the Constitution prohibiting bills of attainder; They were deprived of their right to be secure in their persons, papers, and effects and deprived of immunity from unreasonable searches and seizures and deprived of the strict requirements as provided under the Fourth Amendment; they were deprived their right to due process and their immunity from being deprived of their liberty and property as provided in the Fifth Amendment;

they were deprived of the right to a trial by jury as afforded under the Sixth or Seventh Amendments (an adverse finding in the civil action that may be used to institute a criminal action); they were subjected to cruel and unusual punishments forbidden in the Eighth Amendment (particularly on the day the warrant was executed, in that they had not commit any wrongdoing, and their constitutional rights were denied them); they were deprived of their "retained" and "reserved" rights granted in the Ninth and Tenth Amendments respectively when their work was interfered with, and their employment was effectively terminated on the day the warrant was executed in which they were also intimidated, coerced and humiliated. Also, involved was a conspiracy to deny citizens their constitutional rights.

This Court in *Owens v. City of Independence*, 445 U.S. 622 (1980) held: "*A municipality has no immunity from liability under [42 USC] 1983 flowing from its constitutional violations and may not assert the good faith of its officers as a defense of such liability*".

**V. This Petition should be granted because the Code of Federal Regulations 16 CFR 310.3(a)(2)(vi) is unconstitutional.**

First, in Government's Complaint, its request for relief is based upon the violation of 16 CFR 310.3(a)(2)(vi)[26]

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[26] COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF, p 6, par 29.

The only way that US law is made is by the provisions of the Constitution as prescribed by Article I, Section 7, that basic process is as follows: The House of Representative and the Senate must concur and the President must approve a bill in order that it become law; or, should the President disapprove, upon stricter rules The House of Representative and the Senate can override the President's objections and a bill can become law; or should the President not disapprove of a bill and return it within ten days (Sundays excluded) it may become law. Concurrence in the Senate and House of Representatives is achieved by the majority vote of its respective members (or under stricter rules provided). Members of the Senate and the House of Representatives are elected by "the people".

The Code of Federal Regulations 16 CFR 310.3(a)(2)(vi) was formulated and approved by the Federal Trade Commission being signed/ approved by Donald D. Clark secretary of the Commission. They are not members of the Senate, House of Representatives, nor are they the President. They have not been elected by "the people". "The people" under Article I, Section 7 did not give Congress the authority to delegate the making of law in which "the people" expect representation.

Therefore, The Code of Federal Regulations 16 CFR 310.3(a)(2)(vi) is unconstitutional.

**CONCLUSION**

This case represents questions paramount to the citizens of the United States regarding their securities in their person, property and liberty (life, liberty and pursuit of happiness as expressed in the Declaration of Independence). In this case, and in other cases as reported by the news media, abuses of government abound. By granting this petition for certiorari, those immunities and rights granted under the Constitution may be reinforced.

Therefore, Petitioner respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

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Appendix A

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| FEDERAL TRADE COMMISSION,<br>Plaintiff-Appellee,<br><br>v. | Nos. 00-15644<br>00-15730<br><br>D.C. No. CV-98-669-LDG /RLH |
| AFFORDABLE MEDIA, LLC; et al.,<br>Defendants,<br><br>DENYSE LINDAALYCE ANDERSON; MICHAEL ANDERSON,<br>Defendants-Appellants,<br><br>and<br><br>WALTER K. LAWSON,<br><br>Applicant-in-Intervention Appellant. | MEMORANDUM* |

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

A 2

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted May 14, 2001**

Before: PREGERSON, FERNANDEZ, and WARD-LAW, Circuit Judges.

Denyse and Michael Anderson appeal pro se the district court's summary judgment holding them and their closely-held corporation, Financial Growth Consultants, LLC, liable for violations of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (1997), and the Commission's Telemarketing Sales Rule, 16 C.F.R. § 3 10.3 (a)(2)(vi) (1995), in connection with the Andersons' telemarketing of fraudulent marketing opportunities. Walter K. Lawson appeals pro se the district court's order denying his motion to intervene. We have jurisdiction under 28 U.S.C. § 1291.

We review de novo a district court's grant of summary judgment. *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d II 68, 1170 (9th Cir. 1997). We review de novo a district court's denial of a motion to intervene as of right. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). We affirm.

Because extensive evidence indicates that the Andersons were recklessly indifferent to the falsity of representations made to consumers prior to 1997, and that they gained actual knowledge of

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

the fraudulent nature of the investment scheme by September 1997, the district court did not err in holding the Andersons liable for restitution. *See Publ'g Clearing House*, 104 F.3 d at 1171.

Because this court affirmed many of the rulings upon which the Andersons rely in contending that the district court judge should have recused himself from the case, *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1235-1237, 1241-43 (9th Cir. 1999), and because the Andersons' contentions are without factual support in the record, the district court judge did not abuse his discretion in declining to recuse himself. *See United States v. Wilkerson*, 204 F.3d 794, 797 (9th Cir. 2000).

Because defendants have no right to the release of frozen assets for the payment of legal expenses, *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 6175 629 (1989), and because the Andersons violated the temporary restraining order and the preliminary injunction order when they refused to repatriate offshore assets, the district court did not abuse its discretion in limiting the release of frozen assets to compensate attorneys. *See CFTC v. Am. Metals Exch. Corp.*, 991 F.2d 71, 79-80 (9th Cir. 1993) (limiting release of frozen funds proper where defendant's unfrozen funds were accessible and where defendant delayed production of financial records to the court).

Because Lawson's motion to intervene as of right was untimely, asserted no cognizable interest in the case, indicated no impairment of Lawson's interests if the judge denied the motion, and failed to prove that Lawson's putative interests

Weren't adequately represented without intervention, the district court did not err in denying Lawson's motion to intervene as of right. *See League of United Latin Am. Citizens*, 131 F.3d at 1302.

**AFFIRMED.**

Appendix B

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

AFFORDABLE MEDIA, LLC, et al.,
Defendants.

CV-S-98-0669-LDG (RLH)

**ORDER**

The following matters come before the court on plaintiff Federal Trade Commission's ("FTC") motion for summary judgment (#177, opposition #192, reply #200); defendants' objections to the proposed final order (#288, reply #292); the FTC's motion to strike the declaration of Michael Anderson (#291); motion to intervene of right has been filed by Walter Lawson (#203); Lawson's proposed complaint against the FTC (#204); motion to change venue to the Southern District of California (#202); motion for trial by jury (#201); and motion to vacate TRO, etc., (#248); and defendants' counsel's motion to release assets to compensate attorneys, or, in the alternative, to withdraw as counsel of record for defendants Financial Growth Consultants (#296, opposition #299, reply #300, reply #303).

The FTC brought this action alleging that defendants were conducting a classic Ponzi scheme, in which defendant Sterling Group, LLC ("Sterling"), claimed that its investment offerings, which depended on the sale of products advertised on television, yield profits of 25 percent or higher within 90 days. Defendants were able to sustain their scheme for many months, which generated increased new investment from victims who would eventually lose their money when the scheme collapsed under its own weight.

Defendant Financial Growth Consultants, LLC ("FGC"), whose owners and principals were defendants Michael and Denyse Anderson, was Sterling's principal telemarketing arm from mid-1997 until early 1998. In answer to the FTC's complaint, FGC conceded that it provided agreements to consumers to contract with Sterling for the investments; that it promised consumers a share of the proceeds from the sales generated by commercials run by Sterling; that its telemarketers made unsolicited telephone calls to consumers to solicit investments; that it told consumers that previous Sterling investors earned returns of 50% or more, plus a return of principal, within 60 to 90 days; and that consumers were highly likely to enjoy similar returns; and that it told consumers they were highly likely to receive returns of 25 % or more on their investments within a period of 90 days. What FGC and the Andersons deny is that they had the requisite knowledge of material representations to be held liable for injunctive relief and restitution.

On April 13, 1998, this court entered an ex parte temporary restraining order ("TRO") against

the defendants, and on May 22, 1998, issued a preliminary injunction (which was affirmed on appeal), based in part on the FTC's showing that FGC and the Andersons were at least recklessly indifferent to the truth or falsity of the misrepresentations. In opposition to summary judgment, [1] the Andersons set forth their version of the facts; argue that the validity of the FTC's position can only be determined by assessing the credibility of witnesses at trial; and address several evidentiary concerns.

The court must determine, viewing the evidence in the light most favorable to the nonmovants, whether there are any genuine issues of material fact. Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir. 1996). Once the FTC has made a prima facie case for summary judgment, the defendants cannot rely on general denials; they must produce significant probative evidence that

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[1] On October 20, 1999, Michael Anderson filed an declaration in support of objections to the FTC's proposed final order. This document, taken either as an objection to the FTC's proposed final order, or as a further opposition to the motion for summary judgment, is untimely, and will not be considered on summary judgment. Accordingly, the court will grant the FTC's motion to strike the declaration (#291), and deny the objections to the proposed final order (#288), which relies on the declaration. Even if the declaration had been timely filed in opposition to summary judgment, it is based on unauthenticated documents to which a proper foundation as business records has not been laid. Furthermore, the court notes that the materials and arguments in opposition to summary judgment were timely presented by the Anderson's counsel before an alleged breakdown of the attorney/client relationship. In fact, the Anderson's opposed their counsel's withdrawal before the opposition to the motion for summary judgment was filed.

demonstrates that there is a genuine issue of material fact for trial. FTC v. Publishing Clearing House, Inc., 104 F.3d 1168, 1170 (9th Cir. 1997). A representation is deceptive and violates Section 5 of the Federal Trade Commission Act if its net impression is likely to mislead consumers, even if the representation is literally true. See Sterling Drug, Inc. v. FTC, 741 F.2d 1146, 1154 (9th Cir. 1984), cert. denied, 470 U.S. 1084 (1985). The test for a violation of Section 5 is whether the representations are likely to deceive consumers. FTC v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994), cert. denied, 514 U.S. 1083 (1995). To hold an individual liable for injunctive relief under the FTC Act, a showing must be made that (1) the corporation committed misrepresentations or omissions of a kind usually relied on by a reasonably prudent person, resulting in consumer injury, and (2) that the individual participated directly in the acts or practices or had the authority to control them. Publishing Clearing House, 104 F.3d at 1170.

In order to find liability for restitution, the FTC must also show that the party "had knowledge that the corporation or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon which a reasonable and prudent person would rely, and that consumer injury resulted." Id. at 1171. To satisfy the knowledge of requirement for monetary equitable relief, the FTC must show that a defendant "had actual knowledge of material misrepresentations, [was] recklessly indifferent to the truth or falsity of a misrepresentation, or had an awareness of a high probability of fraud along with an

intentional avoidance of the truth." Id.

In this action, the FTC has presented detailed and substantial evidence in support of its summary judgment motion. The FTC has offered tape recordings of sales pitches, declarations from investors, and declarations from FGC's former employees, demonstrating that FGC's misrepresentations were widely disseminated and of the type that would be relied upon by reasonable individuals. FGC and the Andersons do not controvert this evidence. The FTC has also shown that investors suffered injury as a result of the representations made to them. Investors invested a total of $35,7555,764 in fraudulent Sterling enterprises, of which some $20,618,823 is attributable to the FGC. Under the FTC Act, investors are entitled to restitution, the monetary equivalent, or recession of their transactions. Neither FGC nor the Andersons offered evidence to controvert this showing of injury.[2]

The FTC relied in part upon FGC's and the Andersons' admissions and statements in arguing that these defendants are liable for injunctive and equitable relief. The Andersons have presented no evidence controverting the FTC's showing that the Andersons had authority to control FGC, or that Michael Anderson participated in FGC's misrepresentations. The fact that the FGC and the Andersons ceased their wrongful conduct does not preclude injunctive relief. United States v. Odessa Union Warehouse Co-op, 823 F.2d 172, 176 (9th

[2] To the extent that FGC and the Andersons challenge the admissibility of the FTC's summaries of evidence on injury, the court finds them to be admissible under FRE 1006.

Cir. 1987). Morever, that the Andersons had engaged in previous telemarketing misconduct, and continued to be involved with entities engaged in questionable conduct also supports injunctive relief.

The FTC has shown that FGC and the Andersons were at least recklessly indifferent with regard to the truth or falsity of the misrepresentations made by FGC employees. The Andersons were not amateurs in the telemarketing business. Their half-hearted attempts at due diligence cannot pass for legitimate investigation when representations of such colossal investment returns were being made. The Andersons claim to have contacted the Better Business Bureau and called several satisfied investors in May 1997 to investigate Sterling. The Andersons present nothing, however, to negate the suggestion that such investigation was inadequate, given that Sterling, as with other Ponzi schemes, initially paid investors in full to encourage them and others to continue investing. The Andersons do not deny that many investor references contacted by them became paid shills who received compensation from FGC for each prospective investor with whom they spoke. And they do not dispute that John Diamond and Randy Lazer, with whom they allegedly spoke about Sterling's operation, informed the Andersons that they were not Sterling's fiduciaries, even though written materials identified them as such. In fact, the Andersons concede that they had knowledge that Randy Lazer was denying fiduciary status at the same time he was issuing written statements to the contrary. And despite all of these incongruities which should

have put them on notice that something was amiss, the Andersons never attempted to contact the manufacturers of the products that Sterling claimed it was selling to confirm that Sterling was in fact selling product to consumers. At the time that the December 16, 1997, memorandum from Randy Lazer stating that Sterling had sold 146,549 units of product the prior week, the Andersons should have been clearly on notice to consider such information with skepticism and caution.

Finally, the FTC has also established that the Andersons had actual knowledge of the falsity of the claims being made regarding the Sterling investments. As early as mid-September 1997, an FGC telemarketer informed the Andersons of the apparent lack of real sales of Sterling's products, for which the telemarketer was fired. When approached in September 1997 by another FGC telemarketer with concerns about Sterling, Michael Anderson stated that "[Y]ou could due diligence yourself into trouble. Eventually, its going to come down to what you knew, when you knew, and what you did about it." When the same telemarketer discussed these concerns with Denyse Anderson in late October or early November, she replied that "it's not a Ponzi until they run away with the money." As early as November 1997, concerns were raised by several telemarketers, and the Andersons admit, that late payments were being made to investors, yet they continued to sell the Sterling investment. Also, in November 1997, Denyse Anderson disclosed to an FGC telemarketer that she transferred money offshore because "the Feds can come in any day and shut

you down. The Feds will never find the money [if it is put offshore]." Even after the Andersons had the opportunity to inspect Sterling's books in January 1998, they continued to market the investment, earning a 45% commission on the sales. Indeed, at this time, for a consumer to obtain the promised 50% return, plus return of principal, in 60 to 90 days, the investment would have to earn almost 200% in that term, which annualized is approximately 1,000%.

Except for bald assertions that the credibility of witnesses must be tested at trial, the FTC's showings of reckless indifference or actual knowledge remain uncontroverted. Conclusory, self-serving affidavits, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact. Publishing Clearing House, 104 F.3d at 1171. Moreover, the mere assertions that a witness is not credible does not present a genuine issue of material fact. Here, FGC and the Andersons suggest that the former telemarketing employees' statements are not trustworthy because they may be disgruntled as a result of their terminations. However, neither FGC nor the Andersons dispute that at least one of these employees was fired as a consequence of their discussions regarding concerns about Sterling--the exact subject of which the Andersons deny knowledge.

Based on the above, the court finds that FGC and the Andersons have not met their burden of raising a genuine issue of material fact regarding their liability for injunctive and equitable monetary relief. The motion for summary judgment will be granted, and the court will enter

the FTC's revised proposed final order for judgment and permanent injunction as to defendants Financial Growth Consultants, LLC, Michael Anderson, and Denyse Anderson.

In this case, a motion to intervene of right has been filed by Walter Lawson (#203). Lawson claims that he was deprived of constitutional rights when the FTC exercised the TRO freezing assets in this case. Specifically, Lawson claims that FGC and the Andersons owe him a salary. Lawson, who is unrepresented, has not shown, however, that the FGC and the Andersons did not adequately sue for the termination of the preliminary injunction, and litigate the merits of this case. Furthermore, as a result of the grant of the FTC's motion for summary judgment, Lawson's motion to intervene is now moot, and will be denied.[3] Moreover, Lawson's proposed complaint for trial by jury (#201); and motion to vacate TRO, etc., (#248) will also be denied as moot. FGC's and the Anderson's counsel has filed a motion to release assets to compensate attorneys, or, in the alternative, to withdraw as counsel of record for defendants Financial Growth Consultants (#296). The FTC has opposed the release of assets to compensate the Anderson's counsel (#299), and Michael and Denyse Anderson have filed a reply (#300). From the papers received, it appears that the attorney-client relationship between the Andersons and their counsel has broken down.

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[3] The court has reviewed Lawson's motion to intervene and related filings, and finds nothing contained therein which would materially alter this court's summary judgment decision.

Therefore, counsel for the Anderson's will be permitted to withdraw. The district court may limit or deny access to frozen funds for use as payment for attorneys fees. FTC v. World Wide Factors, Ltd., 882 F.2d 344, 347 (9th Cir. 1989). In doing so, the district court weighs the equities and takes into account the probable success on the merits. Based on the issuance of the preliminary injunction, and other factors weighing in favor of the FTC's likelihood of success on the merits, the court has released $38,000 of the $174,780.46, which counsel claims it is owed by FGC and the Andersons, leaving an arrearage of $129,695.23. While the court has heretofore awaited the outcome of the Anderson's counsel's efforts to repatriate the trust funds in the Cook Islands before considering counsel's request for payment, the court will reconsider whether to unfreeze any domestically frozen assets to compensate counsel. In doing so, however, the court will deny counsel's present motion without prejudice to refiling a motion which documents the time spent on this case. This will also allow the FTC to respond to the complete arguments and documents provided.

Therefore,

IT IS HEREBY ORDERED that plaintiff Federal Trade Commission's ("FTC") motion for summary judgment (#177) is GRANTED. The court will execute contemporaneously with this order the revised final order and permanent injunction (#274).

IT IS FURTHER ORDERED:

defendants' objections to the proposed final order (#288) are DENIED.

IT IS FURTHER ORDERED that the FTC's motion to strike the declaration of Michael Anderson (#291) is GRANTED.

IT IS FURTHER ORDERED that the motion to intervene of right has been filed by Walter Lawson (#203); Lawson's proposed complaint against the FTC (#204); his motion to change venue to the Southern District of California (#202); his motion for trial by jury (#201); and his motion to vacate TRO, etc., (#248) are DENIED.

IT IS FURTHER ORDERED that defendants' counsel's motion to withdraw as counsel of record for defendants FGC and the Andersons (#296) is GRANTED.

IT IS FURTHER ORDERED that defendants' counsel's motion for release of assets to compensate attorneys (#296) is DENIED without prejudice to refiling a motion which documents the time spent on this case.

DATED this 17th day of March, 2000.

/s/ Lloyd D. Geroge
Lloyd D. George
United States
District Judge

Appendix C

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | |
|---|---|
| FEDERAL TRADE COMMISSION, | CV-S-98-669-LDG (RLH) |
| Plaintiff, | |
| v. | |
| AFFORDABLE MEDIA, LLC, | |
| Defendants. | |

~~[Proposed]~~ FINAL ORDER FOR JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANTS FINANCIAL GROWTH CONSULTANTS, LLC, MICHAEL ANDERSON, AND DENYSE ANDERSON

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action on April 23, 1998 by filing its complaint against defendants Affordable Media, LLC, Financial Growth Consultants, LLC, Sterling Multi-Media Co., Venture Capitalization Co., Eric S. Stein, Ina L. Bell, Ruth Stein (also known as Ruth Garcia), Denyse L. Anderson, Michael K. Anderson, George J. McWilliams, and Edward J. Hally. The Commission alleges that the defendants engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act and the TSR.

The Commission has now moved this Court for summary judgment against individual defendants Michael Anderson and Denyse Anderson, and against corporate defendant Financial Growth Consultants, LLC pursuant to Federal Rule of Civil Procedure 56, Defendants Financial Growth Consultants, LLC, Michael Anderson, and Denyse Anderson are referred to herein as the "Enjoined Defendants."

The Court, having considered the memorandum and exhibits filed in support of this motion, and all other pleadings and files in this action, and now being fully advised in the premises, hereby makes the following findings of law and fact:

1. This is an action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and under the Telemarketing and Consumer Fraud A-

buse and Prevention Act ("Telemarketing Act"), 15 U. S.C. § 6101, et seq., to secure a permanent injunction and other equitable relief, including rescission, restitution, and disgorgement, against defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices, and the Commission's Trade Regulation Rule entitled Telemarketing Sales Rule, 16 C.F.R. Part 310, in connection with defendants' telemarketing of investment opportunities.

2. This Court has jurisdiction of this matter and over each of the Enjoined Defendants pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue in this district is proper under 28 U.S.C. §§ 139 1 (b) and (c), and 15 U.S.C. § 53(b).

4. The Commission is an independent agency of the United States Government created by statute (15 U.S. C. § 41 et seq.) The Commission is authorized to initiate court proceedings to enjoin violations of the FTC Act, including violations of the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. The Enjoined Defendants' course of trade is in or affecting commerce, within the meaning of Section 4 of the FTC Act, 15 U. S.C. § 44.

6. Defendant Michael K. Anderson was in control of defendant Financial Growth Consultants, LLC. Individually, or in concert with others, he formulated, directed, participated, or con-

trolled the acts and practices of Financial Growth Consultants, LLC, and some or all of the other corporate defendants. He had actual knowledge of the material misrepresentations set forth in finding 9 below.

7. Defendant Denyse L. Anderson was in control of defendant Financial Growth Consultants, LLC. Individually, or in concert with others, she formulated, directed, participated, or controlled the acts and practices of Financial Growth Consultants, LLC, and some or all of the other corporate defendants. She had actual knowledge of the material misrepresentations set forth in finding 9 below.

8. The Enjoined Defendants and persons under their control have misrepresented material facts in violation of Section 5(a) of the FTC Act.

9. The Enjoined Defendants and persons under their control have made false and material misrepresentations to consumers, specifically that consumers who contract with the Enjoined Defendants for the purchase of "Media Units" are highly likely to earn returns of 25% or more on their investment within a period of 90 days.

10. The Enjoined Defendants' false representations set forth in finding 9 above are fraudulent, false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11. The Enjoined Defendants are each a "seller" and a "telemarketer" engaged in "telemarketing" of "investment opportunities," as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (j), (t), and (u).

12. In numerous instances since December

31, 1995, the Enjoined Defendants misrepresented material aspects of investment opportunities, via telemarketing, as set forth in finding 9 above. Therefore, the Enjoined Defendants have violated Section 310.3(a)(2)(vi) of the Rule, 16 C.F.R. § 310.3(a)(2)(vi).

13. Consumers have in fact been injured in the amount of at least $20,618,823 as a direct result of the Enjoined Defendants' violations of Section 5(a) of the FTC Act.

14. The Enjoined Defendants have received at least $9,278,470 that was derived fraudulently and unlawfully from payments by consumers as a direct result of the Enjoined Defendants' violations of Section 5(a) of the FTC Act. Because these funds were fraudulently derived, the Enjoined Defendants did not acquire good title to these funds. Of this amount, defendants Michael Anderson and Denyse Anderson caused at least $2,460,000 in fraudulently obtained funds to be transferred to the Anderson Family Irrevocable Trust, an offshore trust located in the Cook Islands. Because these funds were fraudulently derived, neither Michael nor Denyse Anderson acquired good title to these funds.

15. Based on the record before this Court, the Court finds that there is no genuine issue as to any material fact, and the Commission is entitled to judgment as a matter of law against each Enjoined Defendant, pursuant to Federal Rule of Civil Procedure 56.

16. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue injunctive and other relief against violations of the FTC Act and, in the exercise of its equitable jurisdiction, to

award redress and restitution to remedy the injury to consumers, order disgorgement of profits resulting from defendants' unlawful acts or practices, and issue other ancillary equitable relief.

17. This Court is persuaded that the danger of future violations by the Enjoined Defendants justifies the issuance of injunctive relief. Specifically, it is proper in this case to issue a permanent injunction that: (a) prohibits the Enjoined Defendants from making, in connection with the advertising, promotion, offering for sale, or sale of any good or service, certain misrepresentations; (b) prevents the Enjoined Defendants from violating the Telemarketing Sales Rule, 16 C.F.R. Part 310; (c) bans the Enjoined Defendants from telemarketing and selling or offering for sale investment opportunities of any kind without first obtaining a $5,000,000 performance bond, and (d) provides such other ancillary relief as is necessary to assist the Commission and the Court in monitoring the Enjoined Defendants' compliance with such a permanent injunction.

18. It is proper in this case to enter a monetary judgment against the Enjoined Defendants to redress consumer injury resulting from violations of Section 5(a) of the FTC Act and the TSR by the Enjoined Defendants. The Commission is entitled to judgment against the Enjoined Defendants, jointly and severally, in the amount of $20,618,823, the net consumer injury caused by them, even though this amount may exceed their unjust enrichment.

19. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both

civil and criminal remedies.

20. Pursuant to Federal Rule of Civil Procedure 65(d) the provisions of this Order are binding upon each of the Enjoined Defendants, and their officers, agents, servants, employees and attorneys, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

21. Entry of this Order is in the public interest.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

A. "Telemarketing" means any activity (including, but not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee, independent contractor, or consultant in or for an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, investment, partnership interest, trust interest or other beneficial interest, to make a charitable contribution, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. Provided, however, that

the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the ccnsumers solicited, and the consumer is not required to pay or authorize payment until after such a presentation.

B . "Investment opportunity" means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation.

C. "Assisting others" means providing any of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material; (e) providing names of, or assisting in the generation of, potential customers; (d) performing marketing services of any kind; or (e) acting as an officer or director of a business entity.

**I. PROHIBITED BUSINESS PRACTICES**

THEREFORE, IT IS HEREBY ORDERED that, in connection with the advertising, promotion, offer for sale, or sale of any item, product, good, service, or investment opportunity, the Enjoined Defendants, and their officers, agents, servants, employees, and attorneys, and all persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby per-

manently restrained and enjoined from:

A. Misrepresenting, directly or by implication:

1. The returns that consumers are likely to receive;

2. The returns that consumers have received;

3. The source of previous returns that have been paid to consumers;

4. That consumers are likely to receive the return of their principal;

5. The time frame in which consumers are likely to receive a return on their investment opportunity, as well as the return of their principal;

6. The purpose(s) for which funds raised from consumers will be used;

7. The costs associated with the advertising, promotion, offer for sale, or sale of any item, product, good, service, or investment opportunity;

8. The risk, liquidity, earnings potential, profitability, market value, resale value, or expected income or profit associated with any item, product, good, service, or investment opportunity; and

9. Any fact material to a consumer's decision to purchase any item, product, good, service, or investment opportunity;

B. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to misrepresenting, directly or by implication "[a]ny material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitabili-

ty," 16 C.F.R. § 310.3(a)(2)(vi); and

C. Assisting others to violate any provision of subparagraphs A or B of this Paragraph 1.

**II. BOND REQUIREMENT**

IT IS FURTHER ORDERED that the Enjoined Defendants are hereby permanently restrained and enjoined from (1) engaging in telemarketing, (2) promoting, offering for sale, or selling any investment opportunity, and (3) assisting others engaged in telemarketing or the promotion, offer for sale or sale of investment opportunities unless each Enjoined Defendant who engages in such activity first obtains a performance bond in the principal sum of FIVE MILLION DOLLARS ($5,000,000).

A. This bond shall be conditioned upon compliance with Section 5(a) of the Federal Trade Commission Act, 15 U. S.C. § 45(a), with the Telemarketing Sales Rule, 16 C.F.R. Part 310, and with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as the defendant continues to engage in conduct that requires the posting of the bond, and for at least three years after the defendant has ceased to engage in such conduct. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5(a) of the Federal Trade Commission Act, the TSR, the provisions of this Order, or to any other violation of law.

B. The performance bond required pursu-

ant to this Paragraph II shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which the defendant does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Each such performance bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any false or misleading representation made by the defendant, the defendant's agents, or any persons acting in concert with the defendant, and (2) any consumer so injured.

C. The bond required pursuant to this Paragraph II is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action.

D. At least ten days before the commencement of telemarketing, assisting others engaged in telemarketing, or promoting, advertising, offering for sale, or selling any investment opportunity, the defendant shall provide a copy of the bond required by this Paragraph to the Associate Director for Enforcement at the address specified in Paragraph X of this Order.

E. No Enjoined Defendant shall disclose the existence of a performance bond required by this Paragraph II to any consumer without also disclosing clearly and prominently, at the same time, the following phrase: "THIS BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT, IN THE CASE FTC v. AFFORDABLE MEDIA, LLC ET AL. CV-S-98-669-LDG (RLH), FOR

MAKING FALSE AND MISLEADING REPRESENTATIONS IN THE PROMOTION AND SALE OF INVESTMENTS." The disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100% black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

**III. CONSUMER LISTS**

IT IS FURTHER ORDERED that the Enjoined Defendants are permanently restrained and enjoined from hereafter selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any defendant, at any time prior to entry of this Order, in connection with investment opportunities involving products advertised via direct response television; provided that the Enjoined Defendants may disclose such identifying information (a) with the express written consent of the person whose information is disclosed, (b) to a law enforcement agency, or (c) as required by any law, regulation, or court order.

**IV. MONETARY RELIEF**

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against the Enjoined Defendants, jointly and severally, in the amount of TWENTY MILLION SIX HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED TWENTY THREE DOLLARS ($20,618,823), with post-

judgment interest at the legal rate, for equitable monetary relief, including but not limited to consumer redress, and for paying any attendant expenses of administering any redress fund.

B. Any funds collected by the Commission towards this amount shall be paid into a redress fund administered by the Commission. The Enjoined Defendants shall assist the Commission in identifying consumers who are potentially eligible for refunds. The Commission shall submit a redress plan to the Court for review and approval. If, however, the Commission, in its sole discretion, determines that redress is wholly or partially impractical, any funds not so used shall be deposited into the United States Treasury as an equitable disgorgement remedy. The Enjoined Defendants shall have no right to contest the manner of distribution chosen by the Commission or its designated agent.

C. Defendants Michael Anderson and Denyse Anderson are hereby required, in accordance with 31 U. S.C. § 7701, to furnish to the Commission their social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

D. This equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

**V. TURNOVER OF ASSETS**

IT IS FURTHER ORDERED that:

A. In order partially to satisfy the monetary judgment set forth in Paragraph IV above, any financial or brokerage institution, escrow agent,

title company, commodity trading company, business entity, or person, whether located within the United States or outside the United States, that holds, controls or maintains accounts or assets of, on behalf of, or for the benefit of, any Enjoined Defendant shall turn over such account or asset to the Commission.

B. In order partially to satisfy the monetary judgment set forth in Paragraph IV above, each Enjoined Defendant shall repatriate and turn over to the Commission, within fifteen (15) business days following the entry of this Order, all assets in foreign countries held either: (a) by such Enjoined Defendant, (b) for such Enjoined Defendant's benefit, or (c) under such Enjoined Defendant's direct or indirect control, jointly or singly, including, but not limited to, all assets in the Anderson Family Irrevocable Trust situated in the Cook Islands.

C. Notwithstanding the provisions of subparagraphs A and B of this Paragraph V, all funds or other assets owned by, for, on behalf of, for the benefit of, or for the account of, the Anderson Family Irrevocable Trust ("Trust Funds")(which funds consist of account number 102-3126153-451, in the name of Asiatrust Limited ATF Anderson Family Trust, ("Trust Account") at the ANZ Bank-ing Group, Rarotonga branch) need not be repatri-ated to the territory of the United States and may remain at ANZ Banking Group, Rarotonga branch provided that: (1) the Order of Chief Justice Sir Peter Quilliam, entered by the High Court of the Cook Islands on September 17, 1999, at the re-quest of the United States, requiring that (a) no further dealings be made with the Trust Funds (less $50,000 which Asia-

trust may use to the purposes of costs, disbursements and fees, including legal fees, and for which Asiatrust must account to the High Cook Islands) without the approval of the Registrar of the High Court of the Cook Islands, and (b) the Registrar of the High Court of the Cook Islands be made a joint signatory to the Trust Account, remains in full force and effect; (2) the Registrar of the High Court is made and remains a joint signatory to the Trust Account, and (3) no decision has been issued in the case United States on behalf of its agency the U.S. Federal Trade Commission v. Asiatrust Limited, as trustee of the Anderson Family Irrevocable Trust, Plaint. No. 57/99, currently pending before the High Court of the Cook Islands (Civil Division).

**VI. ORDER DISTRIBUTION**

IT IS FURTHER ORDERED that, for a period of ten years from the date of entry of this Order, defendants Michael Anderson and Denyse Anderson shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where

1. that defendant is the majority owner of the business or otherwise directly or indir-

ectly manages or controls the business, and where

2. the business engages in, or assists others engaged in, telemarketing or the promotion, offer for sale or sale of investment opportuneities; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subparagraph A of this Paragraph VI.

**VII. RECORD KEEPING PROVISIONS**

IT IS FURTBER ORDERED that, for a period of ten years from the date of entry of this Order, the Enjoined Defendants, in connection with any business where

1. that defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

2. the business engages, or assists others engaged in, telemarketing or the promotion, offer for sale or sale of investment opportunities, is hereby restrained and enjoined from:

A. Failing to create, and from failing to retain for a period of three years following the date of such creation, unless otherwise specified:

1. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods, services, or investment opportuneities sold, revenues generated, and the disbursement of such revenues;

2. Records accurately reflecting: the

name, address, and telephone number of each person employed in any capacity by such defendant, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable; provided that such defendant shall retain such records for a period of two years following the date of each such person's termination;

3. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods, services, or investment opportunities purchased, and description of goods, services, or investment opportunities purchased, for all consumers to whom such defendant has sold, invoiced or shipped any goods, services or investment opportunities,

4. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party: (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer; (2) the written complaintor refund request, if any, and the date of the complaint or refund request; (3) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint; (4) each response and the date of the response, (5) any final resolution and the date of the resolution; and (6) in the event of a denial of a refund request, the reason for the denial; and

5. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales

scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three years after the last date of dissemination of any such materials.

B. Destroying, discarding, mutilating, changing, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, consumer lists, files, invoices, telephone records, ledgers, payroll records, or other business or financial documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of that individual defendant.

**VIII. ACCESS TO BUSINESS PREMISES**

IT IS FURTHER ORDERED that, for a period of ten years from the date of entry of this Order, for the purpose of further determining compliance with this Order, the Enjoined Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where the named defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in telemarketing or the sale of investment opportunities, or assisting others engaged in said activities. In providing such access, the Enjoined Defendants shall permit re-

presentatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a reasonable period of time so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subparagraph A of this Paragraph VIII applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present. *Provided* that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to any Enjoined Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

**IX. AUTHORITY TO MONITOR COMPLIANCE**

IT IS FURTHER ORDERED that the Commission is authorized to monitor the Enjoined Defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory

process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the Enjoined Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to the Enjoined Defendants, their employees, or any other entity managed or controlled in whole or in part by any Enjoined Defendant, without the necessity of identification or prior notice;

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether any Enjoined Defendant has violated any provision of this Order, Section 5(a) of the FTC Act, 15 U. S.C. § 45(a), or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

**X. COMPLIANCE REPORTING BY DEFENDANTS**

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of ten years from the date of entry of this Order, defendants Michael Anderson and Denyse Anderson shall notify the Commission in writing within 30 days of the following:

1. Any changes in the defendant's residence, mailing addresses, and telephone numbers within 30 days of such change;

2. Any changes in the defendant's employment status (including self-employment) within 30 days of such change. Such notice shall include the name and address of each business that the defendant is affiliated with or employed

by, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the structure of any business entity owned or controlled by the defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of bankruptcy petition, or change in the corporate name or address, or any change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any propos-ed change; provided, however, that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, the defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, defendants Michael Anderson and Denyse Anderson shall provide a written report to the Commission, sworn under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Order. This report shall include but not be limited to:

1. The defendant's then current residence (if an individual defendant) or business address (if a business entity defendant) and telephone number;

2. The defendant's then current employment, business addresses and telephone numbers, description of the business activities of

each such employer, and the defendant's title and responsibilities for each employer;

3. A copy of each acknowledgment of receipt of this Order obtained by each defendant pursuant to Paragraph VIII of this Order;

4. A statement describing the man ner in which the defendant has complied and is complying with Paragraphs I through X of this Order; and

C. Upon written request by a representative of the Commission, defendants Michael Anderson and Denyse Anderson shall submit additional written reports (under oath, if requested) and produce documents on fifteen (I 5) days' notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, the defendants Michael Anderson and Denyse Anderson, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW,
Room S-4302
Washington, D.C. 20580

Re: FTC v. Affordable Media LLC

E. For the purposes of this Paragraph X, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any defendant performs services as an employee, consultant, or independent contractor.

**XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

IT IS FURTHER ORDERED that, within five (5) business days after the date of entry of 0this Order, each Enjoined Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

**XII. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

**XII. ENTRY OF THIS JUDGMIENT**

IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk shall enter this Order immediately.

**IT IS SO ORDERED.**

Dated: 17 March, 1999*

/s/Lloyd D. George
LLOYD D. GEORGE
United States
District Court Judge

*The actual date entered was 20 March 2000.

NOTE: Pages 19 and 20 of the original judgment are defendant acknowledgement forms and not included here.

Appendix D

**U.S. Constitution, Article I, Section 7**

"All Bills for raising Revenue shall originate in the House of Representatives- but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of

Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

Appendix E

**Title 42 United State Code, Section 1988(a)**

"Applicability of statutory and common law. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be ex-tended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty".

Appendix F

**Title 42 United State Code, Section 1983**

"Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia".

Appendix G

**Title 42 United State Code, Section 1986**

"Action for neglect to prevent. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such dam-ages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Appendix H

**Title 42 United State Code,**
**Section 1985, sub-sections (2) and (3)**

"Conspiracy to interfere with civil rights.

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pen-ding therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the prem-

ises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators".

Appendix I

**Code of Federal Regulations,**
**16 CFR 310.3(a)(2)(iv)**

310.3 "Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct: ...

(2) Misrepresenting, directly or by implication, any of the following material information: ...

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability.

..."

By direction of the [Federal Trade] Commission.

Donald S. Clark
Secretary